**GOVERNMENT OF ANDHRA PRADESH**
**ABSTRACT**

Tribal Welfare Department – Appeal Petition filed by Kum. Pynuru Divya, D/o Pynuru Shobha, R/o SPSR Nellore District, against the proceedings No. Rc.C5 (M) 587/2016, dated 09.04.2017 of the District Collector, SPSR Nellore, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) - Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition dismissed – Orders -Issued.

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**SOCIAL WELFARE (TW.CV.2) DEPARTMENT**

G.O.Ms.No.20 Dated: 08.02.2019
Read the following:

1. Proceedings of the District Collector, SPSR Nellore, Rc.C5(M)587/2016, dated 09.04.2017.
2. The Orders of the Hon'ble High Court of Andhra Pradesh, Hyderabad in WP No. 16070/2017, dtd. 28.04.2017 filed by Kum. Pynuru Divya, D/o Pynuru Shobha.
3. Appeal Petition filed by Kum. Pynuru Divya D/o P. Shobha, R/o Kothapeta, Rapur Vil & Mandal, SPSR Nellore District, on 09.05.2017.
4. Govt. Memo No.587246/CV.2/2017, dated 01.06.2017.
5. From the District Collector, SPSR Nellore, Lr.No.Rc.C5(M) 587/2016, dated 06.08.2017.
6. Govt. Memo No.587246/CV.2/2017, dated 08.11.2017, 28.11.2017, 10.01.2018, 06.02.2018, 20.03.2018 , 30.04.2018, 05.06.2018, 07.08.2018, 17.09.2018 & 22.10.2018.

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**ORDER:**

In the reference 1st read above, the District Collector, SPSR Nellore has issued orders cancelling S.T.-Yanadi caste certificate obtained from the then Tahsildar, Rapur, in the year 2010 by Kum. Pynuru Divya, D/o Pynuru Shobha.

2. In the reference 2nd read above, Kum. Pynuru Divya, D/o Pynuru Shobha has filed W.P.No.16070/2017, before the Hon'ble High Court of Andhra Pradesh, Hyderabad against the proceedings No. Rc.C5 (M) 587/2016, dated 09.04.2017 of the District Collector, SPSR Nellore. The Hon'ble High Court of Andhra Pradesh, Hyderabad, while disposing the said WP on 28.04.2017, has given liberty to the petitioner to prefer an appeal before the Government within fifteen (15) days from the date of receipt of a copy of the order and, on receipt of the same, the Government shall take up the appeal of the petitioner as well as that of her mother, preferred against the order dated 29.12.2013 in Appeal No.RC.C5(M)/1576/13, and dispose of the same by giving due opportunity to the petitioner and her mother and after verifying the record within a period of six (6) months thereafter. But, due to several administrative difficulties the matter could not be disposed off within the time limit as directed by the Hon'ble High Court in the said W.P., however, after giving notices from time to time to the Appellant through his Counsel the matter has been examined by the Appellate Authority.

3. In the reference 3rd read above, Kum. Pynuru Divya, D/o Pynuru Shobha, has filed an Appeal Petition before the Government, against the Proceedings of the District Collector, SPSR Nellore. After examining the said Appeal Petition, Government have admitted the Appeal Petition and called for the parawise remarks and connected records from the District Collector, SPSR Nellore in the reference 4th read above.

4. In the reference 5th read above, the District Collector, SPSR Nellore has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Kum. Pynuru Divya, D/o Pynuru Shobha.

5. The said Appeal Petition has been posted for hearing on 18.11.2017, 16.12.2017, 27.01.2018, 17.02.2018, 07.04.2018, 19.05.2018, 23.06.2018, 18.08.2018, 06.10.2018 & finally on 03.11.2018 and the same has been informed to the Appellant and the Counsel for the Appellant in the reference 6th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government. Further, the Appellate Authority has conducted the final hearing in the said appeal petition on 03.11.2018 & the appellant/ the Counsel for the appellant were attended for the said hearing schedule and argued the case.

**[Conte..on P.2]**

6. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant/ the parawise remarks submitted by the District Collector, SPSR Nellore and proceedings of the District Collector, SPSR Nellore, dated 09.04.2017, the Appellate Authority is observed that :

I. The appellant in her grounds has stated that authorities were solely relied on the proceedings of the appellant mother, where the respondent authorities were cancelled the caste certificate of the appellant mother and the same was challenged by filing writ petition WP No.22025 of 2014, which was pending before the Hon'ble High Court. Basing on the proceedings of the appellant mother, without following due process of law, simply cancelled the caste certificate of the appellant on the ground that the caste of the appellant mother was cancelled by the then District Collector. Hence it is respectfully submitted that the impugned order passed by the respondent is not legal and the same is in violation of principles of natural justice.

II. Further she has stated that the District Collector has failed to observe that since from the childhood, the appellant was recognized in the society as she belongs to ST Community and her school education records were also shows that she belongs to ST Community and she was under care and custody of her mother since from child hood, because her father has left out from the family by leaving her mother and children, hence it is submitted that the order passed by the respondent is liable to be set aside on the ground of non consideration of relevant factors.

III. The District Level Scrutiny Committee has observed that before the DLSC, the appellant has stated that her mother belongs to ST-Yanadi community and custody of her mother since from child hood, because her father has left out from the family by leaving her mother and children. It is submitted that after the marriage between a tribal with a non-tribal, the main factor for consideration is whether the couple is accepted by the tribal society to which the tribal spouse belongs. If she is accepted by the Society, then their children shall be deemed to be Scheduled Tribe. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, circumstances may be there when a Scheduled Tribe woman may have children from marriage with a non-Scheduled Tribe man. In that event, the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their own community. The recognition and acceptance by the society of the children born out of a marriage between a member of Scheduled Tribe with an outsider, which is the main determining factor irrespective of whether the tribe is matriarchal or patriarchal. The final result will always depend on whether the child was accepted as a member of the Scheduled Tribe or not. In the instant case, the ST-Yanadi social status of mother of the appellant is pending with the Government (C.No.2638/CV.2/2014) and before the DLSC, the mother of the appellant has stated that her father belongs to Yanadi (ST) community and her mother belongs to Modaliar (OC) community, that they are illiterates. She also stated that she does not know the details of her paternal relatives. But, she failed to produce substantive evidences in support of the Yanadi (ST) caste status of her father and herself. The DLSC observed that the surname Pynuru is not found in Yanadi Tribe and the same is predominantly found in Modaliar (OC) caste. She herself married to a person, who belonging to forward caste, i.e, Modaliar (OC) which is her mother's community. Hence, she is not in the fold of Yanadi (ST) community and she was not accepted by the tribal society. In view of the above, she cannot be considered as a member of Yanadi-ST community. Based on the DLSC findings, the District Collector, SPSR Nellore has cancelled the appellant's ST-Yanadi caste certificate.

IV. Under section 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.

V. The Appellate Authority is observed that during the course of hearing, the advocate to the appellant submitted arguments as per grounds in appeal petition and stated that the lower authority failed to observe that the appellant belongs to ST community and her school certificates indicates that she belongs to ST community and her mother brought her in her community fold, who belongs to ST community and her father who belongs to BC community as deserted her mother

**[Conte..on P.3]**

in her childhood and as such her case may be considered as ST community. On verification of the documents and the grounds of appeal and Para wise remarks as well as the other documents and material available on the record it is noticed that except the above contention nothing was placed for appreciation of the case of the appellant and she failed to produce any evidence that she was accepted by the tribal community. It is further brought to the notice that the certificate earlier issued to the individual in a routine manner and the same was cancelled after conducting detailed & thorough enquiry into the caste status of the individual. That as per the Act 16/1993 that the burden of proof lies on the appellant and it is the responsibility of the appellant to produce necessary evidence and documents to claim the same.The appellant, could not place any additional material despite having been given several opportunities by the Appellate Authority and the Government in principle is very liberal in receiving the documents in any stage of the appeal in order to ensure that the principles of natural justice are strictly followed and the party having Genuine claim should never be deprived of the same under the guise of technicalities or some procedures. In the instant case that the appellant except relaying the evidence filed before the lower authority failed to produce any additional material for re-appreciation of the case on hand. As seen from the record the lower authority passed the order after reasonable appreciating the evidence available on record as per law which deserves no interference. Hence it is apparent that the appeal is devoid of any merits and there is no infirmity either in the findings of the DLSC or the learned District Collector, SPSR Nellore District.

VI. Further, it is observed that in Circular Memo. No.10956/CV1/97-2, dt.16.2.1998 instructions were issued by the Government for issuance of Caste Certificates. As per the said instructions general instructions for claiming Community Certificates are as follows:

**General Instructions :-** (Applicable in all cases)
Where a person claims to belong to Scheduled Caste or Scheduled Tribe by birth it should be verified:-

i. that the person and the parents actually belong to the community claimed;
ii. that this community is included in the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950 as amended in 1976, which specified the Scheduled Castes or Scheduled Tribes in relation to the State of Andhra Pradesh;
iii. that the person belongs to the State of Andhra Pradesh and the area within the State in respect of which the community has been Scheduled;

**V. Status of the Off-spring of a couple where one of the spouses is a member of Scheduled Caste and the other that of a Scheduled Tribe.**

As regards the status of the off-spring whose father is a member of Scheduled Caste and mother of a Schedule Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father, in the large majority of cases, having regard to the concept of domicile explained in para IV above. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs. The same principal will also apply to the case of an off-spring whose mother is a member of a Scheduled Caste and father of a Scheduled Tribe. However, each case has to be examined in the light of the attendant facts and circumstances.

As per the said instructions stated supra, in the instant case, the appellant has failed to produce the any evidence that she was accepted by the tribal community and also failed to her mother belongs to ST community. That taking consideration of the above and material on the record that it can be concluded that the lower authority passed the orders as per law which does not deserve any interference.

7. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No16 of 1993), decide that the appeal petition filed by Kum. Pynuru Divya, D/o Pynuru Shobha, does not deserve any interference. Hence, Proceedings of the District Collector, SPSR Nellore issued vide Rc. C5 (M) 587/2016, dated 09.04.2017, is hereby upheld and the appeal petition filed by Kum. Pynuru Divya, S/o Pynuru Shobha, is hereby dismissed and the caste certificates issued by the then Tahsildar, Rapur, is deemed to be cancelled.

**[Conte..on P.4]**

8. The District Collector, SPSR Nellore is directed to take necessary consequential action in the matter.

9. The records (Rc.No.C5(M)/587/2016, dated .2013, containing pages CF: 1 to 152) received from the District Collector, SPSR Nellore through in the reference 5th read above, are returned herewith in original to the District Collector, SPSR Nellore and he is requested to acknowledge the receipt of the same, immediately.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**R. P. SISODIA**
**PRINCIPAL SECRETARY TO GOVERNMENT**

To
The District Collector, SPSR Nellore.
(with original records) (BY RPAD)

Pynuru Divya D/o P. Shobha,
R/o Kothapeta, Rapur Village & Mandal,
SPSR Nellore District.

Ms.V. Roopesh Kumar Reddy, Advocate,
Flat No.301, Plot No.12 & 13,
Bharathi Nilayam Apartment,
Women's Co-Operative Society,
Yousufguda, Hyderabad-500045.

The District Educational Officer, SPSR Nellore.
**Copy to:**
The PS to M(TWE&HFW)
The PS to Principal Secretary.(TW).

**// FORWARDED:: BY ORDER //**

**SECTION OFFICER**